

20 December 2018

Final report by the Complaints Commissioner**Complaint number FCA00482***The complaint*

1. You complained to the FCA because you are dissatisfied with the evidence it relied on at a Regulatory Decisions Committee (RDC) and Upper Tribunal hearing about your Part 4A permissions; and you believe it failed to comply with relevant data protection legislation.

What the complaint is about

2. In element one of your complaint you stated that the FCA relied on information which it knew to be false when presenting its case against your firm in the RDC and Upper Tribunal.
3. In element two of the complaint you raised concerns about the FCA's lack of compliance with data protection legislation by knowingly publishing unsigned data.

What the regulator decided

4. The FCA decided not to investigate your complaint as it believes element one could and should have been more appropriately dealt with in another way, in accordance with paragraph 3.6 of the Complaint Scheme, and element two falls outside of the Scheme in accordance with paragraph 1.1, and should be referred to the Information Commissioner's Office (ICO) for consideration.

Why you are unhappy with the regulator's decision

5. *Element one* of your complaint is that you are unhappy with the FCA's decision as it maintains that there is a court order against you for the repossession of your property and "home office" and it refuses to provide you with evidence or a copy of this, which you allege to be a violation of s3 of "the Fraud Act". Furthermore, you also allege that in reliance on this possession order, the FCA

FCA00482

maintains that a third party taking possession of your property and documents stored within it was legal, when in fact this amounts to burglary.

6. *Element two* of your complaint is that the FCA is not complying with your subject access request and it refuses to provide you with a copy of the possession order.
7. You want the FCA to restore you to the position you would have been in, had the repossession, your criminal convictions and the cancellation of your Part 4A permissions not taken place.

My analysis

8. I have reviewed the files relevant to your complaint, including the Upper Tribunal judgment which gives a clear background to your case and upholds the decision of the RDC to withdraw your permissions.
9. The issues you raise in *Element one* of your complaint are matters which were considered by the Upper Tribunal, who had sight of and had accepted the validity of the possession order in relation to your property which served as your “home office”, and made their decision to allow the cancellation of your Part 4A permissions considering all the relevant facts as a whole.
10. The Tribunal’s decisions and findings of fact cannot be challenged through the Complaints Scheme: under the Scheme, I am bound by the Tribunal’s findings of fact (paragraph 6.15). The correct way to challenge a Tribunal decision is to refer the case to the Court of Appeal. Therefore, the FCA was correct in deciding not to investigate this element of your complaint, under paragraph 3.6, as it would have been more appropriately dealt with in another way.
11. *Element two* of your complaint raises matters which relate to the processing and management of your personal data, which is a matter that falls outside the scope of the Complaints Scheme (see paragraph 1.1) and it should be referred to the ICO for consideration. As such, this element of your complaint is also excluded from the Scheme.
12. After I issued my preliminary report, there was significant correspondence between you and my office. However, you have not provided me with substantive comments about the contents of the report.

13. You requested that I provide you with evidence of the allegations made against you by the FCA in relation to the withdrawal of your Part 4A permissions and the name of the agent making the allegations, as well as any supporting evidence the FCA sent to the Upper Tribunal.
14. I informed you that I am restricted by legislation and policy in what I can disclose to complainants, and that my office does not as a matter of course disclose all the materials we have access to. I suggested that you make a subject access request (at no cost to you) so that my office could consider what information, including your personal data and non-restricted materials, we could properly disclose to you, and offered to extend the time limit for your response to my preliminary report so that you could review these materials once they were provided to you.
15. You did not take up this opportunity to properly request information which you are entitled to and, as stated above, you did not comment on my preliminary report.

My decision

16. I understand that this is not the decision you were hoping for. However, for the reasons I have set out I consider that the FCA's decision not to investigate them was correct. Furthermore, I have set out what steps are available to you to obtain the personal data held by my office, but you have chosen not to make a subject access request.
17. In my preliminary report I proposed to send you a copy of the possession order relating to your property and "home office" with this report, since it appears from the papers that it has previously been disclosed to you in the course of the earlier proceedings and this is now attached. Any further concerns which you have about the possession order are not matters with which this scheme can deal: you might wish to seek legal advice on whether and how to pursue them.

Antony Townsend
Complaints Commissioner
20 December 2018